
**Department of Transportation
United States Coast Guard**

National Pollution Funds Center

OIL SPILL LIABILITY TRUST FUND

**Guidance Information For Use
During an Oil Spill**



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PURPOSE

This information and guidance is provided to assist Federal On-Scene Coordinators (FOSCs) and others during a spill response. The format is informal. This is not intended to be an exhaustive synopsis on management or uses of the Oil Spill Liability Trust Fund (OSLTF), or on the rights and liabilities of polluters and those damaged by pollution under the Oil Pollution Act.

OSLTF Guidance and Information

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I. GENERAL INFORMATION ON THE OSLTF

The **Oil Spill Liability Trust Fund (OSLTF)** is a **billion-dollar fund** established as a source of money to pay removal and certain other costs and damages resulting from oil spills or substantial threats of oil spills to waters of the United States. The OSLTF is used for costs not directly paid by a responsible party (RP) or guarantor, including costs to respond to “mystery spills” for which there is no identified RP.

The Coast Guard’s **National Pollution Funds Center (NPFC)**, Arlington, Virginia, manages the OSLTF.

II. ACCESS TO THE FUND

- * **All Federal On-Scene Coordinators (FOSCs)** obtain immediate access to a funding account for incident response by requesting a Federal Project Number and “ceiling” amount from their local District office, or from the Ceiling and Number Assignment Processing System (CANAPS) system on the Internet.
- * **Other federal, state and local government agencies** assisting the FOSC get reimbursable funding authority via a FOSC-approved Pollution Removal Funding Authorization (PRFA). NPFC will work with the FOSCs, the agencies, and the Incident Area Commander (IAC)/Area Unified Commander (AUC) to set PRFAs in place.
- * **States** may opt to access up to \$250,000, via the Oil Pollution Act’s **State Access** provision. (FOSC’s still provide initial coordination of the request, and subsequent oversight and coordination).
- * **Federal Lead Administrative Trustees** may submit an Initiate Request to the NPFC to fund the Initiation of Natural Resource Damage Assessments (NRDA).
- * **Natural Resource Trustees** designated by the President, State or Territorial Governor or Tribal governing authority may submit natural resource damage (NRD) claims to the NPFC for NRD costs not paid by the RP.
- * **Claimants** (individuals, corporations, and government agencies) can submit claims for uncompensated removal costs or certain damages caused by the oil spill to the NPFC if the RPs do not satisfy their claims. NPFC adjudicates the claims and pays those with merit. RPs can submit claims provided that: 1) the total of all response costs and damage claims exceed the RP’s statutory limit of liability; or 2) the spill was caused solely by a third party, an Act of God or an Act of War.

COSTS FOR THE FOLLOWING CAN BE CHARGED TO THE OSLTF:

- ◆ **Removal** includes cleanup contractors, overtime for government personnel, equipment used in removal (generally at established standard rates or lease costs), testing to identify the type and source of oil, disposal of recovered oil and oily debris, and preparation of associated cost documentation.
- ◆ **Natural Resource Damages** refer to costs to restore, rehabilitate, replace or acquire the equivalent of the injured resource; any interim lost use or diminution in value of the injured resource pending restoration; and the reasonable cost of assessing those damages.
- ◆ **Claims** for removal and damages.

OTHER LIMITATIONS TO ACCESSING THE OSLTF:

- ◆ Maximum of \$1 billion per case or balance in the OSLTF, whichever is less.
- ◆ Removal (including response to substantial threat) and INRDA funding are limited to funds available in the OSLTF Emergency Fund. \$50 million is added to the Emergency Fund balance on October 1st of each year.
- ◆ Maximum of \$500 million per case to satisfy NRD claims and assessments.
- ◆ The discharge must impact or substantially threaten to impact navigable waters of the U.S., including the 200-mile Exclusive Economic Zone (EEZ).

LIST OF ADDITIONAL REFERENCE MATERIALS

available via www.uscg.mil/hq/npfc/npfc.htm

- *NPFC User Reference Guide* - available from NPFC
- *Claimant's Information Guide* - available from NPFC
- *NRD Funding Guidelines* - available from NPFC
- *NPFC SONS Response Plan, NPFCINST 16465.1*

III. NATIONAL POLLUTION FUNDS CENTER SUPPORT ROLE

LIST OF SERVICES THAT NPFC CAN PROVIDE DURING A SPILL:

- ◆ Serve as troubleshooter and spokesperson for all Oil Spill Liability Trust Fund (OSLTF) access, documentation and claims issues. If needed, NPFC personnel can be dispatched to the Incident Command System (ICS). In a Spill of National Significance (SONS), NPFC may be called upon to head the Finance Section of the Unified Area Command (UAC) under the Unified Command System (UCS) or ICS.
- ◆ Assure that the OSLTF ceiling remains adequate for the FOSC's removal efforts and is adjusted, as needed. Assist in tracking obligations against the ceiling and also advising the FOSC of the ceiling balance remaining available. Initiate request for Urgent Supplemental Appropriation if Emergency Fund is exhausted.
- ◆ Help negotiate and execute Pollution Removal Funding Authorizations (PRFAs) with any other Federal, State or local government agencies, which the FOSC decides to use as part of the incident response. Work with representatives of those agencies to ensure that their cost documentation is adequate for approval of reimbursement and to support cost recovery from the RP.
- ◆ Provide advice and assistance in identification of the RP. Provide information concerning validity of RP's Certificate of Financial Responsibility for vessel spills, and identity of guarantor. Provide information concerning RP limits of liability. Prepare and deliver, with FOSC concurrence, Notices of Designation (including appropriate advertising requirements) to RPs. Advise the FOSC and act as the FOSC's spokesperson on any matters related to the RP's response to the Notice of Designation. Handle all aspects of advertising for claims, either overseeing the RP's advertising efforts or arranging for NPFC advertising efforts.
- ◆ Negotiate and execute any requested funding agreement for Initiation of Natural Resource Damage Assessments (NRDA) with the Federal Lead Administrative Trustee (FLAT). NRDA's are handled directly between the NPFC and the FLAT, but NPFC personnel will closely coordinate the Initiate portion of the NRDA with the FOSC.
- ◆ Handle all OPA claims-related issues and assist the FOSC in documenting the incident's impact with respect to potential claims. Coordinate among RPs and guarantors when there are multiple RPs. Arranging for adjudication of claims and answering claims-related questions are NPFC responsibilities that should not burden the FOSC.
- ◆ Provide guidance on gathering/consolidating daily cost data and preparation of daily cost estimate summary for inclusion in Pollution Reports.
- ◆ Advise and assist in implementing site specific documentation procedures by

providing forms for daily resource cost documentation and ensuring resource documentation is satisfactorily completed by other Coast Guard activities (e.g., cutters, boats, aircraft) participating under the FOSC's direction. Monitor and help troubleshoot cost documentation problems.

- ◆ Provide legal advice as needed, in coordination with the command's servicing legal office.

NPFC PERSONNEL ARE NOT ABLE TO

- ◆ Act as a contracting officer (KO). NPFC case officers do not have any contracting authority. With the exception of contractor support for responsible party identification, support for commercial contracts for oil spill clean up actions and related needs must come from the District staff or from the Maintenance and Logistics Command contracting staff. This may require that a KO be temporarily assigned to the UCS/ICS.
- ◆ Act as the FOSC's general finance officer or logistics officer, other than in the capacity of designated UAC Finance Section Chief during a SONS.
- ◆ Validate utilization of resources. It is important that the FOSC assign individuals under FOSC direction to validate and track personnel and equipment employed during the spill response. This will include both Coast Guard and commercial resources used at specific clean up sites and within the UCS. Generally, the individuals responsible for validating the use of personnel and equipment should be separate from the FOSC's pollution response on-scene representatives. Other governmental agencies (OGA) must document their own costs of participation in order to be reimbursed under their PRFA agreements. However, individuals responsible for validating resource utilization should, if possible, note the movement of OGA personnel into and out of a site.

IV. RESPONSIBLE PARTY LIABILITY ISSUES

◆ COFR REQUIREMENTS/ROLE OF GUARANTOR

- ◆ Prior to certain vessels operating in U.S. waters, its owner/operator must obtain a Certificate of Financial Responsibility (COFR). This COFR is only issued if the owner/operator provides evidence of financial responsibility, up to the vessel's limit of liability (LOL), to pay for removal costs and damages. A vessel's liability limit is based on its gross tonnage and vessel type. Higher limits apply to tank vessels.

- ◆ RPs are permitted to self-insure their financial responsibility requirements. In most cases that involve self-insurers, RPs will also have other insurance through a guarantor who is contractually obligated to pay. In these cases, the U.S. Government does not have OPA direct action rights against the other insurer.

DETERMINING LIMITS OF LIABILITY

- ◆ As the vessel identity is reported, NPFC will provide limits of liability information to the FOSC.
- ◆ An RP can **break (void) the limit of liability** (LOL) several ways, including:
 - ◆ Committing gross negligence or willful misconduct that proximately caused the incident.
 - ◆ Not responding to an Administrative Order
 - ◆ Violating certain laws or regulations that proximately cause the incident.
 - ◆ Failing to report the incident, or reasonably cooperate during removal actions.
- ◆ What happens if RP pays more than their LOL, or, if the RP can only pay to their LOL?
 - ◆ The OSLTF will provide continued funding if the RP stands down or cannot pay.
 - ◆ RPs often continue to provide funding and support after exceeding LOL (RP may submit a claim to the NPFC for excess removal costs and damages).
 - ◆ RPs spending and liability are usually not well defined until long after the response, especially in cases subject to litigation.

◆ **ROLE OF RP IN THE RESPONSE PROCESS**

- ◆ RP has primary responsibility for response to spill incident, including setting up the Incident Command System, joining with the FOSC and State responders in the UAC under the UCS.
- ◆ While the RP leads a reasonable response effort, the FOSC is always in ultimate command and may decide to direct specific action or, if all else fails, actually take the lead role in the response. The RP faces challenges to balance their corporate response with the desires of the FOSC given cost, environmental, political and public relations/media impacts.

◆ **ROLE OF RP IN THE CLAIMS PROCESS**

- ◆ RP has primary responsibility for handling claims, including advertising, adjudication and payment.
- ◆ For spills with large claims potential, the RP may establish a claims office to serve the affected area.
- ◆ NPFC will assure that all of these responsibilities are met. If the RP is deficient, NPFC will perform the claims adjudication function and charge the cost to the RP.

V. FUNDS MANAGEMENT

ESTIMATING THE TOTAL COSTS OF THE SPILL - NEED TO CONSIDER:

◆ RP LIMITS OF LIABILITY (LOL)

- ◆ RP can't be assured LOL will hold until investigation and possible litigation are resolved.
- ◆ RPs who hold a COFR and exceed their LOL are expected to continue the response and file a claim for the actual costs in excess of the LOL.
- ◆ Presence of COFR guarantor or "other insurer" makes RP involvement more likely, or at least increases probability of cost recovery.
- ◆ P&I coverage, the "other insurance", is often considerably greater than LOL.

◆ RESPONSIVENESS OF RP

- ◆ Media interest/public and political awareness often influence RP responsiveness.
- ◆ The FOSC always has the authority to direct or monitor a response. In both cases, government personnel used are considered billable resources.

◆ RP PLANS TO SPEND BEYOND LOL

- ◆ RPs and their guarantors often continue to provide funding and support after exceeding LOL (RP may subsequently submit a claim to the NPFC for excess costs). Whether this will be the case should be determined as soon as feasible to minimize potential transition issues and to quickly estimate potential impacts to the OSLTF.
- ◆ RPs spending and applicability of liability limits are usually not well defined until long after the response, especially in cases subject to litigation.

◆ **OSLTF PER INCIDENT LIMITS/CURRENT OSLTF FUNDS AVAILABLE**
PLUS BALANCE, IF ANY, IF CARRIED FORWARD FROM THE PREVIOUS YEAR

- ◆ Removal and NRD is limited to the balance in the Emergency Fund, i.e., annual appropriation \$50 million.
- ◆ \$1 billion maximum per case for all costs (claims, NRD, removal).
- ◆ \$500 million maximum per case for natural resource damage assessments and claims.
- ◆ Need early warning to project ceiling increases and estimated time to Fund depletion by tracking burn rates for each activity.

◆ **NEED TO TRACK DAILY BURN RATE FOR REMOVAL**

- ◆ The FOSC tracks the daily costs (burn rate) for an incident. The RP may not be forthcoming with this data for legal or PR reasons.
- ◆ Costs incurred by the OSLTF plus USCG resource usage (personnel, equipment, Marine Safety Laboratory),
- ◆ Other government agencies costs (federal, state, and local).

◆ **NEED TO ANALYZE AND MONITOR POTENTIAL DAMAGE CLAIMS COSTS**

- ◆ Typically claims are presented long after removal is over. Claims must be first submitted to the RP. If the RP denies responsibility or 90 days passes without an RP payment, claimants can submit the claim to the NPFC.
- ◆ May be far greater than removal costs.
- ◆ Some key factors driving up claims costs are:
 - Area and length of time for fisheries closures (National Marine Fisheries Service may make this call);
 - Affected traffic and length of time for shipping lane closures;
 - Population and commercial density of affected area;
 - Magnitude and length of time for business interruptions; and
 - Extent of impact on environmentally sensitive areas.

◆ **POTENTIAL NRD COSTS**

- ◆ Typically continues long after removal is over.
- ◆ May be far greater than removal costs.
- ◆ There is a high potential that SONS removal costs may exceed \$1 billion, prior to NRD needs being met.

◆ **AVAILABILITY OF FEDERAL ECONOMIC ASSISTANCE**

- ◆ Department of Commerce, HUD, FEMA and others may offer grants or loans to aid economic relief.
- ◆ Some programs apply to specific regions of the U.S.
- ◆ Need to coordinate these programs with OPA claims program. Others may not be aware of the benefits or limitations of OPA claims provisions.

◆ **CEILING MANAGEMENT IN THE EVENT OF MULTIPLE INCIDENTS (I.E., MULTIPLE FOSCS)**

- ◆ Two or more large major spills (“non-SONS”) may deplete the Emergency Fund.
- ◆ Emergency Fund \$50 million per annum apportionment occurs at start of each FY. The Fund is drawn down for rest of year. It is most likely to be depleted late in the FY.
- ◆ Districts and EPA Regions may have to set priorities/make choices for ceiling allocation among major spills or SONS, and ongoing cases.

◆ **FUNDING CONSIDERATIONS FOR MULTIPLE RP INCIDENTS**

- ◆ Spill size alone does not determine the impact on the Fund. RP’s LOL, assets and responsiveness are equally important.
- ◆ Where feasible, FOSCs must segregate all costs between incidents.
- ◆ Portions of the discharged oil in multiple incidents may eventually co-mingle. . RPs may need to sort out how to pay claims resulting from the co-mingled oil. This may need to be sorted out after the removal when cost recovery is sought.

◆ **FUNDING CONSIDERATIONS FOR MIXED OIL AND CERCLA INCIDENTS**

- ◆ Presence of hazardous substances may create a mixed spill (co-mingled oil and hazardous substance) or constitute a single response.
- ◆ A co-mingling scenario will generally be a Superfund response (though EPA and USCG have not established a “bright line”).

- ◆ Mixed site scenario would suggest that all costs be segregated. Preference would be to separate the funding and costs to the OSLTF or CERCLA. This would be done by the FOSC having both an FPN for the OSLTF funded removal actions and a CPN (CERCLA Project Number) for the hazardous materials response actions.
- ◆ When substances are not mixed, a single incident may include a response that falls under OSLTF and CERCLA.

VI. CLAIMS PROCESS

◆ WHAT CLAIMS ARE COMPENSABLE?

- ◆ Uncompensated removal costs.
- ◆ Loss of profits or earning capacity.
- ◆ Net loss of federal, state or local governments' revenues.
- ◆ Net costs to state or local government for increased public services.
- ◆ Loss of subsistence use of natural resources.
- ◆ Damages to real or personal property.
- ◆ Natural resource damages (Initiate, restoration, and emergency restoration).

◆ ROLE OF THE RP

- ◆ The RP and guarantor will receive a Notice of Designation. The RP has five days to deny designation.
- ◆ If the RP does not deny the designation, they have 15 days to respond by advertising their designation and the procedures for submitting claims.
- ◆ To be fully responsive to the requirements in OPA, the RP should assume the entirety of claims responsibilities: advertising, receipt, adjudication and payment of claims. In any event, the NPFC will monitor closely to assure compliance.

◆ ROLE OF NPFC IF RP NOT RESPONSIVE

- ◆ Claimants (other than States submitting claims for uncompensated removal costs) must first present their claims to the RP or the RP's guarantor.
- ◆ State removal cost claims are permitted to go directly to the NPFC.
- ◆ If the RP does not settle a claim within 90 days after filing, a claimant can elect to commence action in court against the RP or present the claim to the NPFC.
- ◆ If NPFC assumes claims responsibility, NPFC will arrange for advertising, receipt, adjudication and payment of claims.

◆ **NEED FOR ON-SITE CLAIMS OFFICE**

For a major spill, either the RP or NPFC will probably need to establish one or more claims offices in the area of greatest impact.

◆ **REQUIREMENT TO PAY INTERIM CLAIMS**

- ◆ The RP, or the NPFC, can pay interim damage claims.
- ◆ An interim payment does not limit a claimant's right to claim for other damages not paid or addressed under the interim claim.

This may be a major concern among the political interests and damaged parties.

◆ **IMPORTANCE OF ADDRESSING CLAIMS ISSUES IN PRESS RELEASES**

- ◆ Damaged parties are a major public affairs client.
- ◆ NPFC will provide information to help the Joint Information Center (JIC) educate the public. This may be a copy of the RP's advertisement and explanation of the RP's claims process and or copies of the NPFC Claimant's Guide and phone numbers.
- ◆ Claims will be paid more quickly if the public knows the procedures; especially important is the need for good documentation on behalf of the claimant.

LIST OF ADDITIONAL REFERENCES

available via www.uscg.mil/hq/npfc/npfc.htm

- Claims Interim Rule
- Claimant's Information Guide
- NRD Funding Guidelines
- Claims Standard Operating Procedures

VII. NATURAL RESOURCE DAMAGES

◆ ROLE OF TRUSTEES

- ◆ "Natural Resources" include land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including resources of the exclusive economic zone), any state or local government or Indian Tribe, or any foreign government.
- ◆ The FOSC is first called upon to make the determination that an OPA incident has occurred. FOSC involvement is also to assure there is no logistical conflict between removal and Trustee efforts.
- ◆ Trustee representatives may recommend that consideration be given to cutting back on removal if resources are pinched for NRD. Competing interests for NRD claims, other damage claims and removal funding will be great.

◆ TYPES OF NATURAL RESOURCE DAMAGES

- ◆ The costs to restore, rehabilitate, replace or acquire the equivalent of the injured resource.
- ◆ Any interim lost use or diminution in value of the injured resource pending restoration.
- ◆ The reasonable cost of assessing those damages.

◆ FUNDING FOR NATURAL RESOURCE DAMAGES

- ◆ Federal Lead Administrative Trustees may request the obligation of funds from NPFC to initiate NRDAs.
- ◆ Any Natural Resource Trustee may submit claims for upfront funding of emergency restoration, assessment, and/or restoration if the claim is based on a plan.
- ◆ Natural Resource Trustees may submit claims for costs incurred on emergency restoration, assessment, and/or restoration.

◆ **COORDINATION WITH THE RESPONSIBLE PARTY**

- ◆ As in other areas, the Responsible Party (RP) has primary responsibility to pay all of the costs/damages listed above.
- ◆ Normally, the Trustees will approach the RP to fund these costs up front.
- ◆ The Trustees are encouraged, however are not required, to first seek Initiate Funding from the RP for preassessment activities.
- ◆ Trustees must first present claims to the RP or the RP's guarantor before coming to the Fund.

◆ **ROLE OF OSLTF/NPFC IF RP DOESN'T PAY - CLAIMS PROCESS**

- ◆ If the RP does not settle a claim within 90 days after filing, a claimant can elect to commence action in court against the RP or present the claim to the NPFC.
- ◆ If NPFC assumes claims responsibility, NPFC will arrange for receipt, adjudication and payment of claims. A contractor may be hired to analyze the supporting information submitted by the claimants.

◆ **OPA NRD FUNDING LIMITS PER INCIDENT**

- ◆ Maximum of \$500 million per incident to pay Natural Resource Damage claims, including NRD assessments.
- ◆ Initiation of NRD Assessment may be paid out of the Emergency Fund, subject to its availability.

◆ **IMPACT ON LIFE CYCLE COST OF SPILL**

- ◆ NRD Assessment costs can become substantial depending on the complexity of the situation.
- ◆ Damages in environmentally sensitive areas (e.g., wetlands) may be very costly.
- ◆ Costs may not be known or estimable for months or years after the response.